

**Introduced by Senator Runner**

February 16, 2006

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An act to add Section 20175.3 to the Public Contract Code, relating to public contracts.

**LEGISLATIVE COUNSEL'S DIGEST**

SB 1316, as introduced, Runner. Design-build contracts: City of Victorville.

Existing law requires public entities to comply with certain procedures in soliciting and evaluating bids and awarding contracts for the erection, construction, alteration, repair, or improvement of any public structure, building, road, or other public improvement. Existing law, until January 1, 2011, permits cities in the Counties of Solano and Yolo, with the approval of the appropriate city council, to enter into specified design-build contracts, as defined, in accordance with specified provisions. Existing law requires any city that elects to use the design-build method to make a specified report to the Legislative Analyst's Office before December 1, 2009, and requires the Legislative Analyst's Office to report to the Legislature regarding the use of the design-build method by each city, as provided.

This bill, until January 1, 2011, would permit the City of Victorville, with the approval of the city council, to enter into design-build contracts, as defined, in accordance with specified provisions. This bill would require the City of Victorville, if it elects to use the design-build method, to make a specified report to the Legislative Analyst's Office before December 1, 2009, and would require the Legislative Analyst's Office to report to the Legislature regarding the effectiveness of the design-build method. This bill would make a legislative finding and declaration of the necessity to enact special legislation with respect to the City of Victorville.



This bill would require specified information to be verified under oath, thus imposing a state-mandated local program by expanding the scope of the existing crime of perjury.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 20175.3 is added to the Public Contract  
2 Code, to read:

3 20175.3. (a) (1) This section provides an alternative  
4 procedure for bidding on building construction projects  
5 applicable in the City of Victorville, upon approval of the city  
6 council.

7 (2) The city may award the project using either the lowest  
8 responsible bidder or by best value.

9 (b) (1) It is the intent of the Legislature to enable cities to  
10 utilize cost-effective options for building and modernizing public  
11 facilities. The Legislature also recognizes the national trend,  
12 including authorization in California, to allow public entities to  
13 utilize design-build contracts as a project delivery method. It is  
14 not the intent of the Legislature to authorize this procedure for  
15 transportation facilities, including, but not limited to, roads and  
16 bridges.

17 (2) The Legislature also finds and declares that utilizing a  
18 design-build contract requires a clear understanding of the roles  
19 and responsibilities of each participant in the design-build  
20 process. The Legislature also finds that the cost-effective benefits  
21 to cities are achieved by shifting the liability and risk for cost  
22 containment and project completion to the design-build entity.

23 (3) It is the intent of the Legislature to provide an alternative  
24 and optional procedure for bidding and building construction  
25 projects for cities.



1 (4) The design-build approach may be used, but is not limited  
2 to use, when it is anticipated that it will reduce project cost,  
3 expedite project completion, or provide design features not  
4 achievable through the design-bid-build method.

5 (5) If the city council elects to proceed under this section, it  
6 shall establish and enforce, for design-build projects, a labor  
7 compliance program containing the requirements outlined in  
8 Section 1771.5 of the Labor Code, or it shall contract with a third  
9 party to operate a labor compliance program containing the  
10 requirements outlined in Section 1771.5 of the Labor Code.

11 (c) As used in this section, the following definitions apply:

12 (1) “Best value” means a value determined by objectives  
13 relative to price, features, functions, and life-cycle costs.

14 (2) “Design-build” means a procurement process in which  
15 both the design and construction of a project are procured from a  
16 single entity.

17 (3) “Design-build entity” means a partnership, corporation, or  
18 other legal entity that is able to provide appropriately licensed  
19 contracting, architectural, and engineering services, as needed,  
20 pursuant to a design-build contract.

21 (4) “Project” means the construction of a building and  
22 improvements directly related to the construction of a building,  
23 but does not include streets and highways, public rail transit, or  
24 water resources facilities and infrastructure.

25 (d) Design-build projects shall progress in a four-step process,  
26 as follows:

27 (1) (A) The city shall prepare a set of documents setting forth  
28 the scope of the project. The documents may include, but are not  
29 limited to, the size, type, and desired design character of the  
30 buildings and site, performance specifications covering the  
31 quality of materials, equipment, and workmanship, preliminary  
32 plans or building layouts, or any other information deemed  
33 necessary to describe adequately the city’s needs. The  
34 performance specifications and any plans shall be prepared by a  
35 design professional who is duly licensed and registered in  
36 California.

37 (B) Any architect or engineer retained by the city to assist in  
38 the development of the project-specific documents shall not be  
39 eligible to participate in the preparation of a bid with any  
40 design-build entity for that project.



(2) (A) Based on the documents prepared in paragraph (1), the city shall prepare a request for proposals that invites interested parties to submit competitive sealed proposals in the manner prescribed by the city. The request for proposals shall include, but is not limited to, the following elements:

(i) Identification of the basic scope and needs of the project or contract, the expected cost range, and other information deemed necessary by the city to inform interested parties of the contracting opportunity, to include the methodology that will be used by the city to evaluate proposals, and specifically if the contract will be awarded to the lowest responsible bidder.

(ii) Significant factors that the city reasonably expects to consider in evaluating proposals, including cost or price and all nonprice related factors.

(iii) The relative importance of weight assigned to each of the factors identified in the request for proposals.

(B) With respect to clause (iii) of subparagraph (A), if a nonweighted system is used, the city shall specifically disclose whether all evaluation factors, other than cost or price, when combined are:

(i) Significantly more important than cost or price.

(ii) Approximately equal in importance to cost or price.

(iii) Significantly less important than cost or price.

(C) If the city chooses to reserve the right to hold discussions or negotiations with responsive bidders, it shall so specify in the request for proposal and shall publish separately, or incorporate into the request for proposal, applicable rules and procedures to be observed by the city to ensure that any discussions or negotiations are conducted in good faith.

(3) (A) The city shall establish a procedure to prequalify design-build entities using a standard questionnaire developed by the city. In preparing the questionnaire, the city shall consult with the construction industry, including representatives of the building trades and surety industry. This questionnaire shall require information including, but not limited to, all of the following:

(i) If the design-build entity is a partnership, limited partnership, or other association, a listing of all of the partners, general partners, or association members known at the time of



1 bid submission who will participate in the design-build contract,  
2 including, but not limited to, mechanical subcontractors.

3 (ii) Evidence that the members of the design-build entity have  
4 completed, or demonstrated the experience, competency,  
5 capability, and capacity to complete projects of similar size,  
6 scope, or complexity, and that proposed key personnel have  
7 sufficient experience and training to competently manage and  
8 complete the design and construction of the project, as well as a  
9 financial statement that assures the city that the design-build  
10 entity has the capacity to complete the project.

11 (iii) The licenses, registration, and credentials required to  
12 design and construct the project, including information on the  
13 revocation or suspension of any license, credential, or  
14 registration.

15 (iv) Evidence that establishes that the design-build entity has  
16 the capacity to obtain all required payment and performance  
17 bonding, liability insurance, and errors and omissions insurance.

18 (v) Any prior serious or willful violation of the California  
19 Occupational Safety and Health Act of 1973, contained in Part 1  
20 (commencing with Section 6300) of Division 5 of the Labor  
21 Code or the federal Occupational Safety and Health Act of 1970  
22 (Public Law 91-596) settled against any member of the  
23 design-build entity, and information concerning workers'  
24 compensation experience history and worker safety program.

25 (vi) Information concerning any debarment, disqualification,  
26 or removal from a federal, state, or local government public  
27 works project. Any instance when an entity, its owners, officers,  
28 or managing employees submitted a bid on a public works  
29 project and were found to be nonresponsive, or were found by an  
30 awarding body not to be a responsible bidder.

31 (vii) Any instance when the entity, its owners, officers, or  
32 managing employees defaulted on a construction contract.

33 (viii) Any violations of the Contractors' State License Law  
34 (Chapter 9 (commencing with Section 7000) of Division 3 of the  
35 Business and Professions Code), excluding alleged violations of  
36 federal or state law including the payment of wages, benefits,  
37 apprenticeship requirements, or personal income tax withholding,  
38 or of Federal Insurance Contribution Act (FICA) withholding  
39 requirements settled against any member of the design-build  
40 entity.



1 (ix) Information concerning the bankruptcy or receivership of  
2 any member of the design-build entity, including information  
3 concerning any work completed by a surety.

4 (x) Information concerning all settled adverse claims, disputes,  
5 or lawsuits between the owner of a public works project and any  
6 member of the design-build entity during the five years preceding  
7 submission of a bid pursuant to this section, in which the claim,  
8 settlement, or judgment exceeds fifty thousand dollars (\$50,000).  
9 Information shall also be provided concerning any work  
10 completed by a surety during this period.

11 (xi) In the case of a partnership or other association that is not  
12 a legal entity, a copy of the agreement creating the partnership or  
13 association and specifying that all partners or association  
14 members agree to be fully liable for the performance under the  
15 design-build contract.

16 (B) The information required pursuant to this subdivision shall  
17 be verified under oath by the entity and its members in the  
18 manner in which civil pleadings in civil actions are verified.  
19 Information that is not a public record pursuant to the California  
20 Public Records Act (Chapter 3.5 of Division 7 of Title 1 of the  
21 Government Code) shall not be open to public inspection.

22 (4) The city shall establish a procedure for final selection of  
23 the design-build entity. Selection shall be based on either of the  
24 following criteria:

25 (A) A competitive bidding process resulting in lump-sum bids  
26 by the prequalified design-build entities. Awards shall be made  
27 to the lowest responsible bidder.

28 (B) The city may use a design-build competition based upon  
29 best value and other criteria set forth in paragraph (2) of  
30 subdivision (d). The design-build competition shall include the  
31 following elements:

32 (i) Competitive proposals shall be evaluated by using only the  
33 criteria and selection procedures specifically identified in the  
34 request for proposal. However, the following minimum factors  
35 shall each represent at least 10 percent of the total weight of  
36 consideration given to all criteria factors: price, technical design  
37 and construction expertise, life cycle costs over 15 years or more,  
38 skilled labor force availability, and acceptable safety record.  
39 Each of these factors shall be weighted equally.



1 (ii) Once the evaluation is complete, the top three responsive  
2 bidders shall be ranked sequentially from the most advantageous  
3 to the least.

4 (iii) The award of the contract shall be made to the responsible  
5 bidder whose proposal is determined, in writing, to be the most  
6 advantageous.

7 (iv) Notwithstanding any provision of this code, upon issuance  
8 of a contract award, the city shall publicly announce its award,  
9 identifying the contractor to whom the award is made, along with  
10 a written decision supporting its contract award and stating the  
11 basis of the award. The notice of award shall also include the  
12 city's second and third ranked design-build entities.

13 (v) For the purposes of this paragraph, "skilled labor force  
14 availability" shall be determined by a demonstrated commitment  
15 to training the future construction workforce of California  
16 through apprenticeship as required by Section 1777.5 of the  
17 Labor Code. The design-build entity shall provide the city with  
18 the name, address, and telephone number of the apprenticeship  
19 programs, or the names of programs approved by the Chief of the  
20 Division of Apprenticeship Standards, from which the  
21 design-build entity intends to request the use of apprentices for  
22 use on the design-build contract.

23 (vi) For the purposes of this paragraph, a bidder's "safety  
24 record" shall be deemed "acceptable" if their experience  
25 modification rate for the most recent three-year period is an  
26 average of 1.00 or less, and their average Total Recordable  
27 Injury/Illness rate and average lost work rate for the most recent  
28 three-year period does not exceed the applicable statistical  
29 standards for its business category, or if the bidder is a party to  
30 an alternative dispute resolution system, as provided for in  
31 Section 3201.5 of the Labor Code.

32 (e) (1) Any design-build entity that is selected to design and  
33 build a project pursuant to this section shall possess or obtain  
34 sufficient bonding to cover the contract amount for nondesign  
35 services and errors and omissions insurance coverage sufficient  
36 to cover all design and architectural services provided in the  
37 contract. This section does not prohibit a general or engineering  
38 contractor from being designated the lead entity on a  
39 design-build entity for the purposes of purchasing necessary  
40 bonding to cover the activities of the design-build entity.



1 (2) Any payment or performance bond written for the  
2 purposes of this section shall be written using a bond form  
3 developed by the city.

4 (f) All subcontractors that were not listed by the design-build  
5 entity in accordance with clause (i) of subparagraph (A) of  
6 paragraph (3) of subdivision (d) shall be awarded by the  
7 design-build entity in accordance with the design-build process  
8 set forth by the city in the design-build package. All  
9 subcontractors bidding on contracts pursuant to this section shall  
10 be afforded the protections contained in Chapter 4 (commencing  
11 with Section 4100) of Part 1. The design-build entity shall do  
12 both of the following:

13 (1) Provide public notice of the availability of work to be  
14 subcontracted in accordance with the publication requirements  
15 applicable to the competitive bidding process of the city.

16 (2) Provide a fixed date and time on which the subcontracted  
17 work will be awarded in accordance with the procedure  
18 established pursuant to this section.

19 (g) The minimum performance criteria and design standards  
20 established pursuant to paragraph (1) of subdivision (d) shall be  
21 adhered to by the design-build entity. Any deviations from those  
22 standards may only be allowed by written consent of the city.

23 (h) The city may retain the services of a design professional or  
24 construction project manager, or both, throughout the course of  
25 the project in order to ensure compliance with this section.

26 (i) Contracts awarded pursuant to this section shall be valid  
27 until the project is completed.

28 (j) Nothing in this section is intended to affect, expand, alter,  
29 or limit any rights or remedies otherwise available at law.

30 (k) (1) If the city elects to award a project pursuant to this  
31 section, retention proceeds withheld by the city from the  
32 design-build entity shall not exceed 5 percent if a performance  
33 and payment bond, issued by an admitted surety insurer, is  
34 required in the solicitation of bids.

35 (2) In a contract between the design-build entity and the  
36 subcontractor, and in a contract between a subcontractor and any  
37 subcontractor thereunder, the percentage of the retention  
38 proceeds withheld may not exceed the percentage specified in the  
39 contract between the city and the design-build entity. If the  
40 design-build entity provides written notice to any subcontractor



1 who is not a member of the design-build entity, prior to or at the  
2 time the bid is requested, that a bond may be required and the  
3 subcontractor subsequently is unable or refuses to furnish a bond  
4 to the design-build entity, then the design-build entity may  
5 withhold retention proceeds in excess of the percentage specified  
6 in the contract between the city and the design-build entity from  
7 any payment made by the design-build entity to the  
8 subcontractor.

9 (l) If the city elects to proceed under this section and uses the  
10 design-build method on a public works project, the city shall  
11 submit to the Legislative Analyst's Office before December 1,  
12 2009, a report containing a description of each public works  
13 project procured through the design-build process that is  
14 completed after January 1, 2006, and before November 1, 2009.  
15 The report shall include, but shall not be limited to, all of the  
16 following information:

- 17 (1) The type of project.
- 18 (2) The gross square footage of the project.
- 19 (3) The design-build entity that was awarded the project.
- 20 (4) The estimated and actual project costs.
- 21 (5) A description of any written protests concerning any aspect  
22 of the solicitation, bid, proposal, or award of the design-build  
23 project, including the resolution of the protests.
- 24 (6) An assessment of the prequalification process and criteria.
- 25 (7) An assessment of the effect of retaining 5 percent retention  
26 on the project.
- 27 (8) A description of the Labor Force Compliance Program and  
28 an assessment of the project impact, where required.
- 29 (9) A description of the method used to award the contract. If  
30 the best value method was used, the report shall describe the  
31 factors used to evaluate the bid, including the weighting of each  
32 factor and an assessment of the effectiveness of the methodology.
- 33 (10) An assessment of the project impact of "skilled labor  
34 force availability."
- 35 (11) An assessment of the most appropriate uses for the  
36 design-build approach.

37 (m) If the city elects not to use the authority granted by this  
38 section, the city may submit a report to the Legislative Analyst's  
39 Office explaining why the city elected not to use the design-build  
40 method.



(n) On or before January 1, 2010, the Legislative Analyst's office shall report to the Legislature on the use of the design-build method by the city pursuant to this section, including the information listed in subdivision (l). The report may include recommendations for modifying or extending this section.

(o) This section shall remain in effect only until January 1, 2011, and of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2011, deletes or extends that date.

SEC. 2. The Legislature finds and declares that a special law is necessary and that a general law cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution because of the unique need to build public facilities in a cost-effective manner in the City of Victorville.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.